

Wai Wong

February 20, 2008

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MILAGROS IMPORTS LIMITED, a)
New York corporation,)
)
Plaintiff,)
)
-against-) NO. 07 CV 3215 (SHS)
)
PROGRESS VANTAGE LIMITED, a)
Foreign corporation,)
)
Defendant.)

DEPOSITION UPON ORAL EXAMINATION
OF
WAI WONG

10:07 A.M. - 12:27 P.M. & 1:39 P.M. - 5:41 P.M.

Wednesday, February 20, 2008

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1 of high school in the United States?

² A Well, I only did one year at university, I didn't graduate.

3 Q Okay. Thank you. What are you seeking in the lawsuit with
4 Milagros?

5 A Well, I want the brand name BETTA, which I'm not so sure
6 whether my English is right. Right now, Milagros is
7 holding my brand name and suing me, which I believe that
8 the brand belongs to us and I see no reason that Irene
9 Torres is holding the brand name.

10 Q Who do you believe the brand name BETTA belongs to in the
11 United States?

12 A It belongs to United States. You mean, who -- can you
13 rephrase that?

14 Q Who do you believe owns the BETTA brand in the United
15 States?

¹⁶ A Well, we do. Goddess or Progress Vantage, my company.

¹⁷ O Is it Progress or is it Goddess?

18 A Progress Vantage.

19 Q So other than the brand name BETTA, are you seeking
20 anything else in your lawsuit with Milagros?

²¹ A we're seeking damages that Milagros causing us

²² Q What are those damages?

23 A Which is already in that -- what do you call that document?
24 The response to the lawsuit. We're countersuing. It's all
25 listed there, but I can't remember the detail.

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1 A Yeah, a corporation.

2 Q And what is your ownership interest in Betta Shoe Factory?

3 A One hundred percent.

4 Q When was it started?

5 A Seven years from today. 2001.

6 Q If I can backtrack. When were Progress Company and -- I'm
7 sorry. When were Goddess Company and Goddess International
8 started?

9 A Goddess Company started the same time as Progress started.

10 Q So in 1999 or 2000?

11 A Yeah.

12 Q What about Goddess International?

13 A It was 2006.

14 Q What kind of business does Betta Shoe Factory do?

15 A Manufacturing.

16 Q Is Betta Shoe Factory actually a factory?

17 A Yes.

18 Q So it is not one of the two factories that you own
19 personally; is that correct?

20 A It is one of the factories I own personally.

21 Q Maybe I misunderstood, but earlier you said that you own
22 two factories a hundred percent?

23 A Yeah.

24 Q But am I correct in understanding that Betta Shoe Factory,
25 you're also the 100 percent owner?

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1 A Yeah.

2 Q So, Ms. Wong has no ownership interest in the factory?

3 A No.

4 Q And how many factories do you have through the business
5 known as Betta Shoe Factory?

6 A Well, Betta Shoe Factory is a factory itself.

7 Q Which one is it? You mentioned two.

8 A It's Dong Guan.

9 MR. LEAVITT: Do you need that spelled for the
10 record?

11 THE REPORTER: Yes, please.

12 MR. LEAVITT: Can you spell that?

13 THE WITNESS: Dong Guan, D-O-N-G G-U-A-N-G --
14 G-U-A-N. No G.

15 Q (By Ms. Power) What is the relationship between Betta Shoe
16 Factory and Progress?

17 A Businesswise, we treat it as supplier and customer.

18 Q Does Betta Shoe Factory manufacture footwear for Progress?

19 A Yes.

20 Q And what is the relationship between Betta Shoe Factory and
21 Goddess International?

22 A The same.

23 Q So other than Progress, Goddess International, Goddess
24 Company and Betta Shoe Factory, do you have an ownership
25 interest in any other company?

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1 licensed names?

2 A You mean as global market we produce? Do you mean global
3 market we produce any license? Can you rephrase that?

4 Q Mm-hm. In the mainland China market, in the domestic
5 market, do you produce any footwear styles under licensed
6 names?

7 A (Witness shakes head.) We only produce our own brand name
8 called BETTA, B-E-T-T-A.

9 Q In the -- can I call it the international market? In the
10 international market, do you produce any footwear styles
11 under licensed names?

12 A Yes, we do.

13 Q And what styles do you produce under licensed names?

14 A Well, we have thousands of styles. Do you want me to
15 specifically say which styles, or do you want me to tell
16 you the brands or the license?

17 Q Which license names do you produce under in the
18 international market?

19 A Well, we produce Clarks, Benetton, Zara, a brand name under
20 Mark & Spencer called Per Una, George for Asda, Daniel
21 Green for United States, Woolrich.

22 MR. LEAVITT: I'm sorry. What was that last
23 one?

24 THE WITNESS: Woolrich, W-O-O-L-R-I-C-H.

25 MR. LEAVITT: Thank you.

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1 manufacturing footwear bearing the BETTA mark for the
2 domestic market?

3 A Yes.

4 Q When was that?

5 A I believe it's 2002.

6 Q Other than footwear with the BETTA mark manufactured for
7 Betta Tech, to what other companies and what countries has
8 Progress manufactured those products for?

9 MR. LEAVITT: I'm sorry. Could you read that
10 back? I just didn't catch it.

11 MS. POWER: I can rephrase it actually. It was
12 messy.

13 Q (By Ms. Power) So I understand that in about 2002 Progress
14 began manufacturing footwear bearing the BETTA mark for the
15 domestic market; correct?

16 A Correct.

17 Q Other than the footwear that had been manufactured for
18 Betta Tech, when did Progress manufacture footwear bearing
19 the BETTA mark for export to other markets?

20 A I don't remember exact date, but we did have shipments to I
21 think it's Italy or somewhere in Europe and Lebanon and
22 Dubai.

23 Q And when did Progress begin manufacturing footwear bearing
24 the BETTA mark for sale in Europe?

25 A As I said, I don't remember the dates. But we made

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1 shipments. I can pull out a document with the invoice and
2 let you know the dates.

3 Q Was it before or after Progress started manufacturing
4 footwear with the BETTA mark in the domestic market?

5 A I think it's after.

6 Q But you don't know for sure?

7 A I don't know for sure.

8 Q What about Lebanon, when were products bearing the BETTA
9 mark first manufactured by Progress for export to Lebanon?

10 A I don't remember the dates, but we definitely have
11 shipments with BETTA mark.

12 Q Was that the same for Dubai?

13 A Same mark, but I don't remember the dates that we made
14 shipments.

15 Q To what customers did you provide footwear bearing the
16 BETTA mark when you began exporting those products to
17 Europe?

18 A You mean the products in Europe?

19 Q Excuse me?

20 A Sorry. Can you say again the question?

21 Q Who were the customers in Europe?

22 A The mainland Europe one I don't remember, but I remember
23 the one in Lebanon, I think it's called ABC Department
24 Store which is very similar to Next in UK. And the one
25 from Dubai is also a department store, I couldn't remember

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1 the name.

2 Q Did you have agreements with the customers in Dubai and
3 Lebanon and Europe for the manufacture of shoes bearing the
4 BETTA mark?

5 A No.

6 Q There was no agreement to produce these shoes?

7 A We own the brand. We don't need any agreement to produce
8 this brand, just purchase order, and we made shipments and
9 invoice mechanism to get payment.

10 Q But am I correct in understanding there was no agreement?

11 A No.

12 Q Did you use distributors in Europe, Lebanon or Dubai?

13 A No.

14 Q Do you use distributors to market and sell footwear bearing
15 the BETTA mark in any other countries?

16 A What do you mean by any other countries?

17 Q Any country other than Europe, Lebanon and Dubai?

18 A No.

19 Q Have you ever entered into a license agreement with any
20 party for the distribution of slippers bearing the BETTA
21 mark?

22 A Sorry. Could you rephrase that?

23 Q Yes. Have you ever entered into a license agreement with
24 any party for the distribution of slippers or footwear
25 bearing the BETTA mark?

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1 A We thought we were entering the licensing agreement with
2 Milagros verbally when we helped Irene start Milagros.

3 Q Other than the verbal agreement that you think you entered
4 into with Milagros, did you ever enter into a license
5 agreement for the distribution of footwear bearing the
6 BETTA mark with any other party?

7 A (Witness shakes head.)

8 Q In your 15 years in business, have you ever entered into a
9 license agreement for any product?

10 A No.

11 Q Have you ever heard of an oral license agreement?

12 MR. LEAVITT: Objection.

13 A Do I have to answer that?

14 Q (By Ms. Power) Mm-hm.

15 A I'm not familiar with licensing agreement in term of
16 license. It's like good gesture, like I did with Mr. Gray,
17 a handshake and gentleman agreement. I only get to know
18 licensing agreement when I had this lawsuit.

19 Q Mr. Wong, when did you first meet Irene-Luisa Torres?

20 A Back in 1995, '96, something like that.

21 Q Am I correct that you worked together for many years?

22 A What do you mean by together?

23 Q That you had a business relationship with Irene for many
24 years; is that correct?

25 A Correct.

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1 A No.

2 Q No?

3 A No.

4 Q At some point Irene was working with Ben Berger; is that
5 right?

6 A Yes.

7 Q And who was your primary contact at Ben Berger?

8 A Irene.

9 Q And over the time that Progress manufactured footwear for
10 Ben Berger, do you have a sense of the amount in dollars of
11 business that came through Ben Berger?

12 A Yes.

13 Q What's that amount?

14 A Well, for a few years it was about over a million U.S.
15 dollars per year. And because we supported Irene to start
16 Milagros, we have to give that up.

17 Q At some point Irene stopped working for Ben Berger; is that
18 right?

19 A That's right.

20 Q And then she started her own business which was Milagros;
21 correct?

22 A That's right.

23 Q When Irene left Ben Berger, she talked to you about her
24 plans to start her own company; right?

25 A Correct.

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1 Q And she told you that she wanted to use the knowledge that
2 she had gained over the years to start her own company;
3 right?

4 A Correct.

5 Q And you were supportive of her business plans; right?

6 A Yes. We gave her a loan to start her business. And we
7 help her to find another person to loan the same amount as
8 we loaned her. And in many ways we help her to get
9 furniture, to get the Empire State Building rental.

10 That's why I was shipping her products that she
11 doesn't have to -- she didn't have to pay us until she
12 received payment from customers, and some orders or some
13 invoices was up to 120 days that we made shipment before we
14 get payment.

15 Q Why did you do all this?

16 A We wanted to have somebody help us to build up the brand in
17 the States.

18 Q What brand?

19 A BETTA.

20 Q Did you tell Irene that?

21 A Yes.

22 Q When?

23 A That's when she was putting the company together.

24 Q When was that?

25 A I don't remember the time or the date, but before Milagros

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1 actually incorporated.

2 Q Did you have discussions in person?

3 A Yes.

4 Q Where?

5 A Well, from time to time she came to Hong Kong when she was
6 still working for Ben Berger, we discussed about it. And
7 couple of times I came to New York and we talked about it,
8 too.

⁹ Q And what did you tell her?

10 A We told her we want to help her to start a business and we
11 have a brand name we want to distribute in the States, that
12 we got agreement from Mr. Kim Gray who support for me to
13 use the brand and we were going to register the brand in
14 the States.

15 Q Why did you want to work with Irene?

16 A She's willing to distribute our brand. And at that time it
17 was -- we didn't have the knowledge or ability or time to
18 come over to United States to set up a new company and do
19 the distribution, and we trusted her, she has the ability
20 to do that, that's the reason we supported her and help her
21 out.

22 Q At that time was Progress doing any business in the United
23 States?

24 A Yes. That's the time we had significant amount of business
25 from Ben Berger, as well as we got business from other

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1 company.

2 Q Did you think that you or Progress would have an ownership
3 interest in Milagros because you were loaning her \$25,000?

4 A No. She asked me to be a partner, I said no.

5 Q Has Progress made any other loans to Irene or Milagros
6 other than that \$25,000 that's been repaid?

7 A No.

8 Q Am I correct that John Lau also loaned --

9 A Correct.

10 Q -- money to Milagros?

11 A Correct.

12 Q Do you know how much that was?

13 A Same amount, \$25,000.

14 Q Do you know the terms of that loan?

15 A No.

16 Q You also testified that you helped Milagros get office
17 space; is that right?

18 A Correct.

19 Q What exactly did you do?

20 A We wrote a guarantee letter to the Empire State Building,
21 telling them we have full support to Milagros, which was
22 request by Empire State Building in order to give them a
23 lease.

24 Q You also said you helped Milagros acquire furniture; is
25 that right?

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1 (EXHIBIT NO. 4 MARKED)

2 Q (By Ms. Power) Mr. Wong, if you can take a look at what's
3 been marked as Exhibit 4 and let me know if you recognize
4 the document.

5 A Mm-hm. Yes.

6 Q Am I correct that this is the answer and counterclaim filed
7 by Progress in this case?

8 A Correct.

9 Q If I can direct you to page 8, paragraph 49?

10 A Yes.

11 Q The paragraph states that Progress is alleging that it
12 became the registered owner of the BETTA mark in Hong Kong
13 in 2002. Do you see that reference?

14 A Yes.

15 Q And then paragraph 50, Progress alleges that it did not
16 immediately launch the BETTA mark in the United States. Do
17 you see that reference?

18 A Correct. Yes.

19 Q Why did Progress not immediately launch the BETTA mark in
20 the United States?

21 A We didn't have the resource to set up distribution in the
22 States.

23 Q And what do you mean by launch the BETTA mark?

24 A Launch, meaning sell and promote BETTA mark in the States.

25 Q I'm sorry. Sell and promote?

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1 A Sell and promote.

2 Q Anything else?

3 A No.

4 Q In paragraph 53 you allege that Irene proposed that she and
5 Progress go into business together. Do you see that
6 reference?

7 A Yes.

8 Q What was that proposal?

9 A She asked me if she leaves -- well, at the time if she left
10 Ben Berger, whether I can support her to go into business
11 on her own.

12 Q And how does that mean that she was proposing Progress go
13 into business with her?

14 A Whether I can support her, like make, manufacture products
15 for her, as well as financially give her money. And then
16 later on we told her that we have a brand we want to
17 distribute in the States.

18 Q Did Irene make this proposal in writing?

19 A Well, she had a few e-mails, some kind of ask about the
20 license or the brand name.

21 Q Was a business proposal between Milagros and Progress --

22 A Not a formal business proposal. It's just e-mails asking
23 questions how we can support her and also verbally asked
24 whether we can loan her money.

25 Q And when did these discussions take place?

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1 A That's the time between -- well, the time before Irene left
2 Ben Berger to Milagros incorporated.

3 Q Were these discussions between just you and Irene?

4 A Well, some with Lynn as well.

5 Q Was anyone else present during these discussions regarding
6 Irene's alleged proposal?

7 A One particular time about the loan, John was there, John
8 Lau.

9 Q So, what else do you remember about Irene's proposal other
10 than she just asked questions about whether Progress would
11 support her new business? What specifically do you
12 remember about her proposal?

13 A She wanted me to be a partner and also wanted John to be a
14 partner of Milagros, and John and I discussed we didn't
15 want to really be partner of Milagros as a company because
16 we don't really know how to the overhead and expenses in
17 the States, in the United States, so we were worried that
18 if we were a partner we will be liable if the company
19 making a loss.

20 Q What did you tell Irene about that?

21 A I told her honestly, like what I said. Well, I told her
22 it's her company, she set it up, I didn't want to really
23 tell her what to do for her company. It's just as long as
24 she can distribute the BETTA brand and we have the support
25 financially for her.

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1 Q So you did not accept Irene's proposal; is that correct?

2 A Correct.

3 Q In paragraph 55 you allege that Progress agreed to license
4 Torres to be the exclusive distributor of its footwear
5 products in the United States bearing its BETTA mark. Do
6 you see that reference?

7 A Yes.

8 Q Who proposed that Irene be Progress' exclusive distributor?

9 A I did.

10 Q When did you propose that?

11 A That's when she was planning to start a business, when it
12 didn't have the name as Milagros. She was telling us she
13 wanted to start a business, so I proposed to her that we
14 have a brand name registered in Hong Kong and China, then I
15 can manufacture BETTA brand and I can register BETTA brand
16 and she distribute it.

17 Q When exactly did you propose this? What date?

18 A I don't have the date. That's between the period of time
19 that she was thinking about leaving Ben Berger and some
20 time before that we made the loan before -- well, right
21 before she left.

22 Definitely before she left Ben Berger and she was
23 thinking -- between the time she was thinking leaving and
24 the time she actually left Ben Berger.

25 Q Was that proposal verbally or in writing?

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1 A Verbally.

2 Q So you admit that there's no written agreement between
3 Progress and Milagros for the distribution of BETTA,
4 products bearing the BETTA mark in the U.S.; correct?

5 A Correct.

6 Q Is it your contention that there was an oral license
7 agreement between Progress and Milagros for the
8 distribution of products bearing the BETTA mark in the
9 United States?

10 A I'm sorry. I didn't understand exact what contention
11 means, but it was my intention that we register the brand
12 and we own the brand and she help us to distribute it.

13 And actually when we initially discussed it, it was
14 just talking about how we can do. And later on, when she
15 actually left Ben Berger, she did send an e-mail to us
16 asking about the details of this brand name and clearly see
17 through the e-mail she asked about licensing fees, she
18 asked about royalty, she asked about the details, forms and
19 history of the brand, and asking about who's going to
20 register the brand, and we all answered it, so it was
21 clearly showing that she knew we own the brand.

22 Q Am I correct, though, that it's your belief that there is
23 an -- or there was an oral license agreement between
24 Progress and Milagros for the distribution of products
25 bearing the BETTA mark in the U.S.?

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1 A I don't know how to say it legally. Do you mean that --
2 well, can you explain me to the term oral licensing? Is
3 there a term -- you asked me earlier whether it's oral
4 licensing or not.

5 As I said, I didn't have the knowledge of anything
6 about licensing at that time. All I knew was that we had a
7 gentleman agreement that we own the brand and she
8 distribute for us.

9 And only now, after this case, I get to know the
10 details and the legal requirement for licensing.

11 Q Earlier you admitted that there's no written license
12 agreement between Milagros and Progress; correct?

13 A Correct.

14 Q I'm trying to understand whether you believed that there
15 was an oral license agreement between Milagros and
16 Progress.

17 A Yes, I do believe in that.

18 Q On what date did you make that agreement?

19 A I don't remember date, but based on the e-mail that we talk
20 about it. There was an e-mail, she specifically asked
21 about the detail of BETTA's license. And I believe if you
22 said oral agreement or oral licensing, I think that can be
23 the date.

24 Personally, I believe that's the date that we have
25 agreement on that. We told her she can use it, she doesn't

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1 have to pay royalty to us, she doesn't have to pay
2 licensing fee to us, and I believe that's the date.

3 Q You're saying that the date of an e-mail when -- excuse me.

4 You're saying that the date that Irene sent you an
5 e-mail --

6 A Mm-hm.

7 Q -- asking about the terms of a license --

8 A Yes.

9 Q -- is the date that this oral license agreement was made?

10 A I believe so.

11 Q Did the license agreement become effective on that same
12 date?

13 A Well, it was always our intention to go that way. So I
14 don't know how to say when the exact date became effective.
15 It's always our intention to help Irene to set up a
16 business and distribute BETTA.

17 Q Is it your belief that the same date that this alleged oral
18 license agreement was made is the same date that that
19 agreement took effect?

20 A I believe we started this kind of agreement even before
21 that.

22 Q On what date?

23 A I don't remember exact date, but we always discuss about
24 it. And I only know it was my intention to do that, and
25 she knew we supported her since the beginning. So as I

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1 said, I didn't have the knowledge about legal contract of
2 licensing.

3 Only we told her we are registering the brand and she
4 will distribute. And the conversation was going on and on
5 for a long time, even before she left Ben Berger.

6 So I can't tell you the exact date that it commenced
7 or it become effective. It's always our intention to
8 support her to set up the business.

9 Q Would you agree that this alleged oral license agreement
10 became effective the same date that it was entered into?

11 A Well, the conversation was going on and on for a period of
12 time, so it's always there. I don't really understand what
13 you mean when the date became effective.

14 Q Who are the parties to the alleged agreement?

15 A In the beginning it's more personal between Irene and I.
16 She didn't even have a company name.

17 Q At some point did that change?

18 A Yes. We help her to set up Milagros, then we become
19 Progress Vantage and Milagros.

20 Q So are you saying that there were two agreements, the first
21 was between you and Irene and the second agreement was
22 between Milagros and Progress or is this all the same
23 agreement?

24 MR. LEAVITT: Objection to form. You can
25 answer.

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1 A I believe it's all the same.

2 Q (By Ms. Power) Was this an exclusive or a nonexclusive
3 agreement?

4 A We didn't specifically discuss about it.

5 Q Was it transferable or nontransferable?

6 MR. LEAVITT: Objection to form.

7 A We didn't discuss it either.

8 Q (By Ms. Power) Did you discuss the payment of royalties?

9 A Yes.

10 Q And what were the terms regarding the payment of royalties?

11 A We told her we will support her. We didn't need her to pay
12 us royalty.

13 Q Why is that?

14 A We wanted someone to help us to build up the brand. And in
15 order for her to re-invest the profit into the business --
16 well, in order for Milagros to make profit and grow, we
17 want her to keep the profit or re-invest it into Milagros
18 and help us to sell more BETTA slippers or BETTA items.

19 Q What was the geographic term of the alleged agreement?

20 A United States.

21 Q Was the alleged agreement only for the use of the BETTA
22 mark or was it for any other mark?

23 A For our agreement, only the BETTA mark.

24 Q And under this alleged agreement, what use of the BETTA
25 mark was Milagros allowed?

1 MR. LEAVITT: Objection to form. You can
2 answer.

3 A We allowed Milagros to use the mark to use on socks, which
4 is a supplier we know, and we let her to use -- to sell
5 some other slippers from a manufacturer called Flicker, who
6 we know have fairly high standard and they can make some
7 items that our factories are not very good at. And we also
8 agreed Milagros to use the mark and make small items
9 through Topper.

10 Q (By Ms. Power) Is there anything in writing that sets
11 forth the scope of what Milagros was permitted to do using
12 the BETTA mark under this alleged agreement?

13 A No.

14 Q What was the length of the alleged agreement?

15 A We didn't discuss it.

16 Q What did you expect it to be?

17 A We expect to review it every two years.

18 Q Did you discuss the circumstances under which this alleged
19 agreement could be terminated?

20 A No.

21 Q Did you discuss providing notice to Milagros before this
22 alleged agreement could be terminated?

23 A No.

24 Q Were there any terms related to giving notice before
25 terminating the agreement?

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1 A No.

2 Q Did the alleged agreement provide for assignment of the
3 BETTA mark?

4 MR. LEAVITT: Objection; asked and answered.

5 You can answer.

6 A I don't understand the question. Sorry.

7 Q (By Ms. Power) My question is, earlier I asked you if
8 there were discussions about whether the oral license
9 provided for the mark being transferable or
10 nontransferable, and you said that that was not discussed;
11 is that right?

12 A Correct.

13 Q And I just want to confirm whether this alleged agreement
14 provided for assignment of the BETTA mark to any other
15 party.

16 A What do you mean by assignment? Sorry. I don't understand
17 the term assignment.

18 Q My question is whether Milagros could allow any other party
19 to use the BETTA mark under this alleged agreement.

20 A Well, we verbally said she can manufacture through Topper,
21 Flicker, and the socks supplier.

22 Q When did you reach this verbal agreement about allowing
23 Milagros to use other manufacturers or suppliers?

24 A Just before Milagros incorporated.

25 Q Was it at the same time that you entered into this alleged

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1 agreement?

2 A That's right.

³ Q Who controlled -- I'll start over.

4 Did Milagros have to get Progress' approval for its
5 use of the BETTA mark under this agreement?

6 A Initially to --

7 MR. LEAVITT: Can you read back that question,
8 please?

12 MR. LEAVITT: Objection. You can answer if you
13 understand that.

14 A Initially, I will get to check the whole line, including
15 every part that Irene's selling. And later on, Irene said
16 she will make me proud of the product, so we let her --
17 gradually we let her to select what's good for the brand.

18 Q (By Ms. Power) Did Milagros have to get Progress' approval
19 for packaging products bearing the BETTA mark under this
20 alleged agreement?

21 A Well, it was come to a decision that we get together and
22 sit down and think what's the best for the brand. So it's
23 not really approval. She just asked if we agreed. I don't
24 know whether you call that approval or not.

25 Q What would you call it?

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1 A It's come to a group decision.

2 Q Did Milagros have to get Progress' approval for advertising
3 that it did for products bearing the BETTA mark under this
4 alleged agreement?

5 A No.

6 Q Did Milagros have to get Progress' approval for special
7 promotions for products bearing the BETTA mark under this
8 alleged agreement?

9 A No.

10 Q You said that initially you would check the lines that were
11 sold by Irene, did I understand that correctly?

12 A Yes.

13 Q When was that?

14 A That was when the new office -- I came over to New York and
15 checked the office out and see whether it fit in the brand
16 and see every single product.

17 Q How long after Milagros had started was that?

18 A I don't remember. It was not long after they moved into
19 the Empire State Building.

20 Q And after you were in New York and you checked the lines
21 that were being offered by Irene initially, did you do
22 anything else to check those lines, or was it at that point
23 that you turned it over to Irene?

24 A Well, later on --

25 MR. LEAVITT: Objection to form.

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1 A -- she still e-mail us the picture or e-mail us what she's
2 doing, keep us posted what she's doing, and gradually then
3 we let her. Well, she said she'll make us proud, so
4 gradually she fewer and fewer time e-mails what she's
5 doing.

6 Q (By Ms. Power) Do you know approximately when that was?

7 A I don't remember the dates.

8 Q Was it within a few months of Milagros starting or was it
9 within the first six months?

10 A It was within a few months after the move into Milagros --
11 or move into the office.

12 Q What rights did Progress retain to the BETTA mark under
13 this alleged license agreement with Milagros?

14 A Sorry. I don't understand what you're asking.

15 Q I'm asking that under this agreement that you say you had
16 with Milagros, what rights did Progress retain?

17 A As I said, I didn't understand -- at that time I had no
18 idea what license agreement is, so we just didn't discuss
19 it.

20 All I knew was we registered the brand and we paid
21 the legal fee to get it registered and we support Irene to
22 distribute our brand.

23 To us it's obvious that we own the brand and she's
24 the distributor. Even on the packaging was specifically
25 make sure that the packaging printed as distributed by

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1 Q (By Ms. Power) And in Dubai, were any of those
2 communications in writing?

3 A No.

4 Q Earlier you testified that as part of helping Milagros get
5 started that you gave Milagros extra time to pay bills; is
6 that correct?

7 A Correct.

8 Q Has Progress ever provided extra time to any other customer
9 to pay its bills?

10 A No.

11 Q Never in the history of Progress has Progress provided
12 extra time to other customers?

13 A Our general term even for customers very close to us is
14 only 30 days after shipment.

15 Q You testified earlier that there was an oral license
16 agreement between Milagros and Progress, but that you
17 received some e-mails from Irene asking questions about
18 this alleged license; is that correct?

19 A Correct.

20 Q Is it your belief that those e-mails set forth the terms of
21 this license agreement that you're alleging?

22 A Yes.

23 Q What e-mail specifically are you referring to?

24 A There was an e-mail -- I forgot was it attention to Lynn
25 alone or attention to both of us and having important forms

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1 asking whether I own this license, who's going to register
2 this license, whether royalty to be paid, whether there's a
3 licensing fee, whether the form of the BETTA can be changed
4 or the color can be changed, things like that.

5 THE WITNESS: Do you remember?

(EXHIBIT NO. 5 MARKED)

7 Q (By Ms. Power) Mr. Wong, you've been handed what's been
8 marked as Exhibit 5. Do you recognize this document?

9 A Yes.

10 Q Is this the e-mail that you're referring to that you
11 believe sets forth the terms of the alleged oral license
12 between Milagros and Progress?

13 A Yes, I believe.

14 Q The date of this e-mail is October 1 of 2003 and October 2
15 of 2003; is that correct?

16 A Yes.

17 Q At the time that you received this e-mail from Irene in
18 October of 2003, had you already entered into the license
19 agreement?

20 MR. LEAVITT: Objection to form. You can
21 answer.

22 A As I said earlier, it's always been discussed even before
23 Irene left Ben Berger. So I believe we already had an oral
24 licensing agreement and this is only the e-mail talking
25 more about the details.

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1 agreement was exclusive or nonexclusive and you stated that
2 it was never discussed; is that right?

3 A That's right.

4 Q And so, my question is whether this was therefore a
5 nonexclusive agreement, because you're saying that under
6 this alleged agreement Milagros was allowed to use other
7 manufacturers.

8 A We didn't use the term exclusive during our discussion. We
9 only say that in order for BETTA brand to take off in the
10 United States, just the product from PVL wouldn't be enough
11 to be full collection for the customer to be interested in.

12 So we agreed that we can use products from Flicker,
13 Topper, as well as some socks suppliers to produce products
14 carrying BETTA brand in order to help with sales and help
15 the market exposure for BETTA. So that's how we discussed,
16 and we didn't use the term exclusive or nonexclusive.

17 Q In the same response in Exhibit 6, there's reference to use
18 being made by other manufacturers with the explicit
19 permission of PVL. Do you see that reference?

20 A Yes.

21 Q What is meant by the explicit permission of PVL?

22 A During our initial discussion that I request Irene to show
23 me all the products made by other manufacturers, that's
24 what I meant.

25 And later on we -- because she has more knowledge

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1 than I do for the market, I agreed that she can choose
2 what's appropriate for the buyer.

3 Q I'm sorry. I don't understand that last part.

4 A Well, we let her to choose what's appropriate for our BETTA
5 mark to be successful in the market.

6 Q In terms of other manufacturers?

7 A Yes.

8 Q Was that explicit permission given in writing?

9 A No.

10 Q Did Progress have an agreement with any of Milagros' other
11 manufacturers of products bearing the BETTA mark?

12 A No.

13 MR. LEAVITT: Objection to form.

14 Q (By Ms. Power) Are you aware that Milagros continues to
15 use other manufacturers to make products bearing the BETTA
16 mark today?

17 A Yes.

18 Q Have you had any contact with Milagros' other manufacturers
19 since this lawsuit was filed?

20 MR. LEAVITT: I'm going to object and direct him
21 not to answer on relevance grounds.

22 Q (By Ms. Power) You can answer.

23 MR. LEAVITT: No. I've directed him not to
24 answer.

25 MS. POWER: You can direct him not to answer on

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1 A Based on the knowledge that Lisa and Tom has.

2 Q Am I correct, though, that these were just projections,
3 there was no specific sales number associated with them?

4 A Correct.

5 Q And in this lawsuit Progress is claiming ownership of the
6 BETTA mark in the U.S.; correct?

7 A Correct.

8 Q Progress also has manufactured products under the mark
9 Betta Spa?

10 A Yes.

11 Q Is Progress also claiming ownership in Betta Spa?

12 A Well, I thought that's the same brand.

13 Q Progress has also manufactured products for the Irene-Luisa
14 Torres mark; is that right?

15 A Correct.

16 Q Is Progress claiming any ownership in the --

17 A No.

18 Q -- Irene-Luisa Torres mark?

19 A No.

20 Q Earlier you testified that when you reviewed the alleged
21 license between Progress and Milagros you looked at the
22 sales that Milagros had made; is that correct?

23 A Correct.

24 Q Were those sales of only products bearing the BETTA mark or
25 did they also include sales of products bearing other